

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

**FILED**

OCT 22 2013

Clerk, U.S. District Court  
District Of Montana

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

LEMUEL THOMAS SMALL,

Defendant/Movant.

Cause No. CR 10-91-BLG-SEH  
CV 13-65-BLG-SEH

ORDER

On May 14, 2013, Defendant/Movant Lemuel Thomas Small filed a motion to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255. Small is a federal prisoner proceeding pro se.

A motion under § 2255 must allege that “the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack.” 28 U.S.C. § 2255(a). Small does not allege there was any error in his sentence when it was imposed. Nor does he allege that his sentence is illegal or “otherwise subject to collateral attack.” *Id.*

Consequently, on September 27, 2013, Small was given an opportunity to amend his motion to meet the standards of § 2255. Order (Doc. 168) at 1-2. Small did not respond. Accordingly, the motion is denied.

Because Small has not made a substantial showing that he was deprived of a constitutional right, 28 U.S.C. § 2253(c)(2), a certificate of appealability is not warranted.

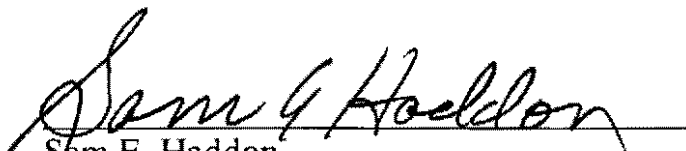
**ORDERED:**

1. Small's motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 (Doc. 164) is DENIED.

2. A certificate of appealability is DENIED. The Clerk of Court shall immediately process the appeal if Small files a Notice of Appeal;

3. The Clerk of Court shall ensure that all pending motions in this case and in CV 13-65-BLG-SEH are terminated and shall close the civil file by entering judgment in favor of the United States and against Small.

DATED this 22<sup>nd</sup> day of October, 2013.

  
Sam E. Haddon  
United States District Court